

DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

SECOM-D-203

8 May 1980

MEMORANDUM FOR: Chairman, DCI Security Committee
VIA: Executive Secretary, DCI Security Committee
FROM: STAT
Security Committee Staff
SUBJECT: SCC/CIWG Tasking, National Clearance/
Investigative Policy for the Entire Government

1. The Chairman of the Security Committee appeared before the SCC/Counterintelligence Working Group on 5 February 1980, reporting on Differing Personnel Security Clearance/Investigative Standards Within the Intelligence Community. As a result of this report, the SCC/CIWG tasked the Security Committee Staff as follows:

Action:

The Security Committee Staff, acting for the SCC/CIWG, will study the problem of differing personnel security clearance/investigative standards from a government-wide viewpoint, not limited to the Intelligence Community. It will make recommendations for a national clearance/investigative standards policy for the entire government. Target date for submission to the Chairman, SCC/CIWG: 15 June 1980.

2. Attached hereto is a draft of a study (Tab A) of the differing clearance/investigative standards found throughout the government and a recommendation for a standard policy for the entire government. The recommendation would cover, (1) access to all forms and levels of classified information; and (2) a standard for civilian employment by the United States Government.

3. The first part of the recommendation would be accomplished by addition of an Annex to E.O. 12065 (Tab B) providing for criteria and investigative standards for all classified information. The second part is an appropriately revised version of the August 1977 Civil Service Commission's draft of a replacement Executive Order for E.O. 10450 (Tab C).

4. It is intended that the attached study and recommendations would serve to fulfill the tasking of the SCC/CIWG. Prior to submitting it to the SCC/CIWG, it would be well to forward information copies to the members of the Working Group, asking them for any comments they might wish to make. This would allow for an advance reading of the stand each organization would take towards this proposal.

5. The first step to be taken would be to send the study and recommendations to the SA/DCI/CI for his review, and to determine that it meets the tasking levied upon the Security Committee Staff.

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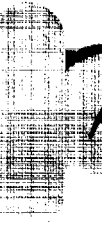
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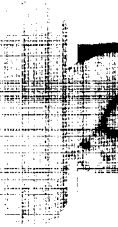


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Executive Order to Replace E.O. 10450

WHEREAS the national interests require that all persons privileged to be employed in the Federal Government shall be trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the Federal Government be adjudged by consistent and uniform standards which comport with the individual's right of privacy;

Now, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 1101 et seq., 1304, 3301, 3333, 7301, 7311, and 7501 et seq. of Title 5 U.S.C., the National Security Act of 1947 (50 U.S.C. 401 et seq.), and the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.), and as President of the United States, and deeming such action necessary in the national interest and in order to protect the rights of citizens seeking employment or employed by the United States, it is hereby ordered as follows:

Section 1. Revocation of E.O. 10450. This order shall become effective 180 days after the date hereof; Executive Order 10450 of April 27, 1953, as amended, is then revoked, except that determinations made under E.O. 10450 will not have to be re-adjudicated.

Section 2. Purpose of the Order. The purpose of this Order is to: establish uniform standards for classifying positions as to their sensitivity; define the types of investigation conducted for making hiring, retention or access determinations under this Order; delineate the authority and responsibilities of the departments and agencies in the implementation of this Order; and establish effective oversight to assure that department and agency implementation of the policies set forth herein is consistent with the interests of the nation and the constitutional and civil rights of the individuals concerned.

To insure consistent application of the standards and procedures contained herein, there shall be established a uniform Federal Personnel Security Program operating under the policies and procedures developed by the Office of Personnel Management and the Department of Justice.

Section 3. Applicability. In addition to the departments and agencies specified in the Act of August 26, 1950, Executive Order 10237 of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government. The provisions of this Order shall apply to all executive branch agencies including any executive department, agency, or independent establishment of the United States or any corporation wholly owned by the United States, the United States Postal Service, Postal Rate Commission, and competitive service positions in the legislative branch. All other legislative and judicial branch organizations may, upon request, utilize the investigative services provided by this Order.

This Order shall not apply to the Director of Central Intelligence or the organizations constituting the Intelligence Community as defined by Executive Order 12036, except the Director of Central Intelligence shall prescribe standards for access to sensitive compartmented information.

Section 4. Standard for Personnel Security. The appointment or retention of each civilian officer or employee in any department or agency is contingent upon the meeting of the following standard:

The personnel security standard shall be whether or not in the interest of the United States the employment or retention in employment of the individual is advisable.

In applying this standard a balanced judgment shall be reached after giving due weight to all the evidence, both favorable and unfavorable, the nature of the position, the mission of the agency, and the value of the individual to the public service.

Section 5. Sensitivity of Positions. Each department or agency shall classify each position as either sensitive or non-sensitive.

(a) The criteria to be applied by the heads of the departments or agencies in designating a position as sensitive are:

(1) Access to information classified as Secret or Top Secret under Executive Order 12065.

(2) Duties involved in the conduct of foreign affairs;

(3) Development or approval of plans, policies or programs which affect the overall operations of a department, agency or organizational component; that is policy-making or policy-determining positions;

(4) Investigative duties, the issuance of personnel security clearances, or the making of personnel security determinations;

(5) Duties involved in approving the collection, grant, loan, payment or other use of property or funds of high value, or other duties demanding the highest degree of public trust and confidence;

(6) Duties involved in the enforcement of laws, or responsibilities for the protection of individuals or property;

(7) Duties, whether performed by Federal employees or contractors, involved in the design, operation or maintenance of Federal computer systems, or access to data contained in manual or automated files and records or Federal computer systems, when such data relates to national security, personal, proprietary or economically valuable information, or when the duties or data relate to distribution of funds, requisition of supplies or similar functions; or

(8) Duties involved in or access to areas which have a critical impact on the national security, economic well-being of the nation, or public health or safety.

(b) All other positions shall be designated as nonsensitive.

Section 6. Personnel Security Investigations.

(a) General - The appointment of each civilian officer or employee in any department or agency shall be made subject to an investigation conducted for the purpose of developing information relevant to determining whether such appointment is in conformance with the standard specified in Section 4 of this Order. The information to be obtained shall relate to the character, reputation, and loyalty of the individual under investigation.

The scope of the investigation shall be determined in the first instance according to the sensitivity of the position, but in no event shall the investigation include less than a National Agency Check, as defined by the Office of Personnel Management except that, upon the request of the head of the department or agency concerned, the Office of Personnel Management may, in its discretion, authorize a lesser investigation with respect to per diem, intermittent, temporary or seasonal employees, or aliens employed outside the United States.

(1) Sensitive Positions. The investigation to be conducted for persons who are to occupy sensitive positions shall be conducted prior to appointment, or before the individual assumes the duties of the position. The scope of the investigation shall be determined, first, if access to classified information is involved (Section 5.(a).(1)) by the scope prescribed in the Annex to E.O. 12065; and secondly, in all other instances defined in Section 5.(a), the scope of the investigation shall consist of no less than a full field investigation, as defined by the Office of Personnel Management.

(i) In case of an emergency, a sensitive position may be filled by a person from whom the required investigation has not been completed if the head of the department, agency, or major organizational component involved, or a designee who is directly responsible to such authority, finds that such an assignment is not contrary to the national interest.

(2) Nonsensitive Positions. The investigation to be conducted for persons who occupy nonsensitive positions shall consist of no less than a National Agency Check.

(a) If the duties of the position require access to information classified as Confidential under Executive Order 12065, or the position is classified at Grade GS-9 or above, or an equivalent rank, the investigation shall consist of a National Agency Check and written inquiries to local law enforcement agencies, educational institutions, former employers, supervisors and references. The investigation may be conducted after appointment, but before access clearance is granted. The investigation for positions classified at GS-8 or below and not requiring access shall consist of a National Agency Check conducted after appointment.

(b) Investigative Responsibility. The investigation of persons entering or employed in the Federal service, including experts and consultants however employed, shall be the responsibility of the Office of Personnel Management, except in cases in which the head of a department or agency assumes that responsibility pursuant to law, or by agreement with the Office of Personnel Management.

(c) Referral of Cases to the Federal Bureau of Investigation. Whenever, during the conduct of the investigation, information is developed which indicates that an individual may have acted or been coerced, influenced or pressured to act in a manner contrary to the national interests, the case shall be referred promptly to the Federal Bureau of Investigation under guidelines promulgated by the Attorney General.

Section 7. Due Process. No person may be denied eligibility for appointment, denied appointment in the Federal service, denied a clearance suspended or removed from a position in the Federal service by any department or agency for failure to meet the standard set forth in Section 4 of this Order without being advised of the reasons therefore and given opportunity to respond; any such action, either proposed or approved, shall be taken in accord with applicable law and regulation.

Section 8. Determinations Related to National Security. The reinstatement, restoration to duty or re-employment of an individual suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the Act of August 26, 1950 (5 U.S.C. 7531 et seq.), or pursuant to Executive Order 9835, Executive Order 10450, or any other security or loyalty program relating to officers or employees of the Government, shall be in accordance with the provisions of the said Act.

Section 9. Review of Unfavorable or Questionable Information Arising Subsequent to Favorable Determination. Whenever there is developed or received by any department or agency information indicating that the retention of any civilian officer or employee in the Federal service may not be in the best interests of the Government, such information shall be forwarded to the head of the department or agency concerned, or to a designee, who, after such investigation as may be appropriate, shall review or cause to be reviewed the unfavorable or questionable information, and determine whether the retention of the person concerned is consistent with the standard set forth in Section 4 of this Order.

Section 10. Program Implementation and Management.

(a) General Policy Oversight. The National Security Council shall exercise oversight over the Office of Personnel Management and the Department of Justice in the operation of the Federal Personnel Security Program.

(b) Office of Personnel Management. The Office of Personnel Management shall:

(1) issue, within 90 days of the date of this Order, a program directive which will prescribe:

(i) criteria to be used in making a determination under the standard set forth in Section 4 of this Order;

(ii) the scope of investigations conducted under this Order;

(iii) instructions related to the protection of the individual's rights;

(iv) guidelines with respect to the updating of investigation;

(v) minimum standards for the selection and training of program personnel; and

(vi) instructions dealing with the use, control, release, maintenance and disposal of investigative reports.

(2) furnish investigative support, upon request, to the legislative and judicial branches of the Government, and to all other Federal Government entities electing to be subject to the provisions of this Order;

(3) establish and maintain a security-investigation index, covering all persons as to whom personnel security investigations have been conducted under this Order, whether by the Office of Personnel Management or any department or agency of the Executive Branch. The index shall contain the name of each person investigated, adequate identifying data concerning such person, identification of the department or agency which has conducted

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an investigation concerning the person, or has suspended or terminated the employment of such person under the authority granted to the heads of departments and agencies by or in accordance with the Act of August 26, 1950. The Security-Investigations Index established and maintained by the Office of Personnel Management under Executive Order 10450 of April 27, 1953, shall be made a part of this Index;

(4) develop and prescribe standard forms to be used to implement the program;

(5) establish a clearing house for program management information;

(6) develop and prescribe statistical reporting procedures designed to facilitate analysis of the effectiveness of the Order; and

(7) evaluate the manner in which the Order is being implemented throughout the Federal Government, prescribe corrective action or modification to the heads of departments or agencies concerning deficiencies noted, and submit to the National Security Council an annual report detailing the Office of Personnel Management's appraisal findings and the extent of department and agency compliance.

(c) Department of Justice. The Department of Justice shall:

(1) Issue, within 90 days of the date of this Order, a program directive which will prescribe:

(i) guidelines for the referral of cases to the Federal Bureau of Investigation, as provided for in Section 6(b) of this Order, and establish the criteria for the use of the information developed by these investigations in the adjudication of such cases:

(ii) guidelines with respect to the use of the polygraph, voice analyzer, or other similar technical equipment for employment screening and in the conduct of personnel investigations;

(2) provide assistance and advice to the heads of departments and agencies regarding the implementation of this Order with respect to actions taken for reasons of national security against applicants and employees.

(d) Departments and Agencies. The departments and agencies, or the heads thereof, shall:

(1) issue, within 90 days of the date of the directives cited in subsection (b)(1) and subsection (c)(1) of this Section, appropriate regulations implementing the policies and procedures of this Order;

(2) implement the program directives, policies and procedures prescribed by the Office of Personnel Management and the Department of Justice;

(3) establish a central personnel security office, responsible for adjudicating cases, granting access clearance and maintaining program records as prescribed by the Office of Personnel Management;

(4) furnish to the Office of Personnel Management information appropriate for the maintenance of the security-investigations index; and

(5) implement any corrective action or modification prescribed by the Office of Personnel Management with respect to the program appraisal responsibility.